

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No.2518 of 2004 (O&M)

Date of decision : 29.01.2019

Danesh Singh and others

...Appellants

Versus

Har Pyari and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Arun Jain, Sr. Advocate with
Mr. Alok Jain, Advocate and
Mr. Dhruv Mittal, Advocate for the appellants.

Mr. Adarsh Jain, Advocate for the respondents.

ANIL KSHETARPAL, J.

Defendants-appellants are in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

At the time of admission, following substantial questions of law had been framed:-

“1. Whether in the facts and circumstances of the instant case the approach of the learned courts below in decreeing the suit filed by the plaintiff respondents, and allegedly purchased 214 kanals 11 marlas land after the civil court decree dated 12.11.1984, can be sustained in law?

2. Whether in view of the fact that the

defendant/appellants purchased the land in a court sale and the same having been confirmed the sale certificate issued, the suit at the instance of the plaintiff respondents was maintainable against the appellants?

3. *Whether in the facts and circumstances of the instant case once the sale in favour of the appellants had been confirmed the plaintiff respondents had any locus standi to question the rights of the appellants?*

4. *Whether in the facts and circumstances of the instant case the reasoning adopted by the learned courts below in decreeing the suit filed by the plaintiff/respondents can be sustained in law?"*

In the considered view of this Court, two issues primarily need determination:-

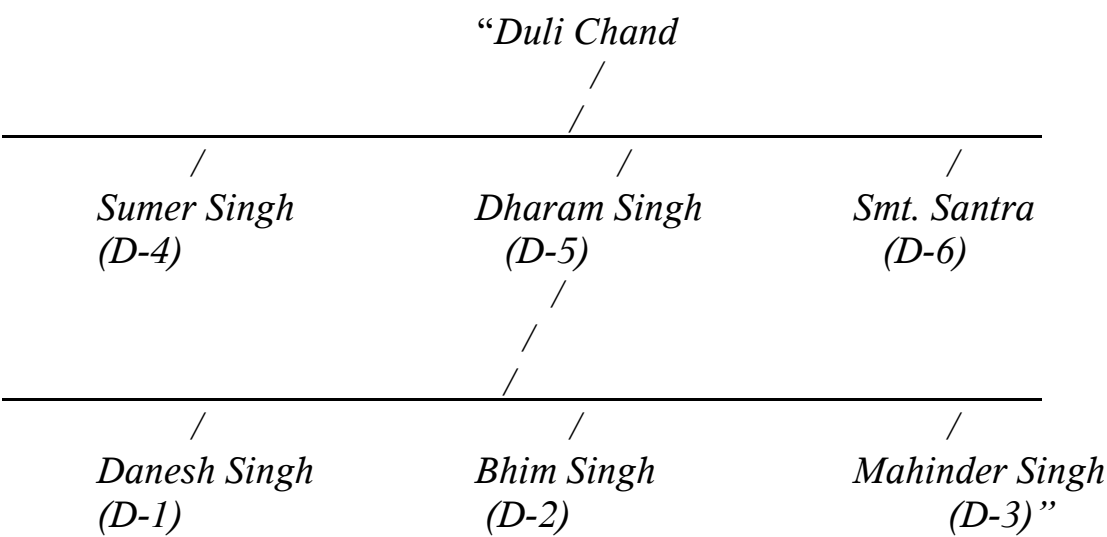
- 1) Whether a suit shall not be maintainable even if it is found by the Court that a fraud was played by the Judgment Debtors not only with the Court but also with the plaintiffs-purchasers for valuable consideration?
- 2) Whether a separate suit to challenge Court auction which had been confirmed would be maintainable by the representative (successor-in-interest) of the Judgment Debtor?

Some facts are required to be noticed before questions are answered.

Duli Chand was original owner of the property measuring 116 kanals and 13 marlas which was mortgaged for taking a loan with New Bank of India. He defaulted in the payment, forcing the Bank to file a suit in the year 1982 for recovery of the amount of ₹15,529.35.

Although, in the plaint, prayer was made to order sale of the property in case the payment is not made, however, the Court granted only decree for recovery of money vide judgment and decree dated 12.11.1984.

Duli Chand had died during the pendency of the suit and his children Sumer Singh and Dharam Singh, sons & Smt. Santra daughter were brought on record as legal heirs. A short pedigree table would be necessary to understand inter se relationship between the parties:-



After the decree was passed for recovery of the amount, Sumer Singh sold land measuring 17 kanals 2 marlas for ₹45,000/- in favour of plaintiff No.1 (respondent herein) vide registered sale deed dated 13.05.1985 and thereafter, vide sale deed dated 24.06.1985, land measuring 7 kanals 9 marlas was sold in favour of plaintiff No.2 (respondent herein) for ₹25,000/-. Thus, land measuring 24 kanals 11 marlas was sold by Sumer Singh in favour of the plaintiffs-respondents for ₹70,000/-.

On 25.05.1985, the Bank filed application for execution of the money decree. On 28.05.1988, auction of the entire land i.e. 116

kanals and 13 marlas is alleged to have been sold for a sum of ₹35,000/-. The property was purchased by Danesh Singh, Bhim Singh and Mahinder Singh, appellants herein sons of Dharam Singh son of Duli Chand. Thus, the auction purchasers were grandsons of Duli Chand, the defendant in the suit for recovery and sons of Dharam Singh Judgment Debtor. When the plaintiffs who were purchasers of the land measuring 24 kanals 11 marlas, through two different sale deeds dated 13.05.1985 and 24.06.1985, were sought to be dispossessed in execution of the decree, they filed the present suit.

Defendants contested the suit and both the Courts on appreciation of the evidence, have granted declaration that the plaintiffs are owners of the property and the Court auction which has been confirmed does not affect their rights and sale by Court auction with respect to the suit land has been declared void and illegal in respect of the suit property. It may be noted here that sale through Court auction was confirmed on 29.08.1988.

The Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the record.

Learned counsel for the defendants-appellants submitted that the separate suit was not maintainable in view of bar to Section 47 of the Code of Civil Procedure. The plaintiffs-purchasers being successors-in-interest of the Judgment Debtor-Sumer Singh could not maintain a separate suit. The plaintiffs ought to have filed an application under

Order 21 Rule 89 of CPC. After confirmation of the Court auction/sale, sale through Court auction was not liable to be set aside while referring to the provisions of Order 21 Rule 90 of CPC including amendment made by State of Punjab. The suit filed by the plaintiffs was barred by limitation as a Court auction can only be challenged within a period of 60 days under Article 127 of the Schedule to the Limitation Act, 1963. Inadequacy of the price as found by the trial Court cannot be a ground to set aside the Court auction. No notice was required to be given to the plaintiffs and the finding of the Court that the Court auction was done secretly, is also erroneous. Courts below have erred in placing reliance on Section 13(1)(c) of the Specific Relief Act, 1963.

On the other hand, learned counsel for the respondents-plaintiffs has submitted that plaintiffs are not representative of the Judgment Debtor rather they have independent right, therefore, bar to maintainability of separate suit as provided under Section 47 of the Code of Civil Procedure would not apply. The Court auction was result of fraud. Any action which is result of fraud can even be challenged in any collateral proceedings. Once fraud has been established, suit was maintainable. No notice was given to the plaintiffs-respondents before auction was held or confirmed, hence, plaintiffs never got an opportunity to object to the execution of the decree. The Court auction/sale was result of collusion and fraud is apparent as just few days back land measuring 24 kanals 11 marlas was sold by Sumer Singh to plaintiff Nos.1 and 2 for ₹70,000/- whereas land measuring 116 kanals 13 marlas, which included

land measuring 24 kanals 11 marlas was sold to defendant Nos.1 to 3 for ₹35,000/-. He further drew attention of the Court to the fact that the Court auction has been conducted in a room of the Sarpanch of the Village where except three bidders, no one else was permitted and the Court auction was only a farce/sham.

As regards fraud, it may be noted that two witnesses, examined by the defendants-appellants. Dharam Singh, DW1 and Siya Ram DW3, have admitted that auction of the land pursuant to money decree by the Bank took place at the residence of Raghu Raj, Sarpanch of the Village. Dharam Singh also admit that the house of the Sarpanch is one mile from one parcel of the land which was sought to be auctioned and half mile away from other parcel of land. Still further, sons (children) of Judgment Debtor purchased the property in a Court auction without seeking permission. Still further, in the proclamation of the sale issued by the Executing Court, specific restriction was incorporated that neither any bid by or on behalf of Judgment Debtor will be accepted nor any sale to them would be valid without the express permission of the Court previously given. No permission from the Executing Court has been placed on file. Still further, plaintiffs were never informed about the Court auction and neither the Executing Court nor the Auctioneer was informed that a part of the property has already been sold by the Judgment Debtor. The price fetched in the aforesaid sham and stage managed auction, was nowhere near the market price. As rightly contended, out of total 116 kanals 13 marlas, 24 kanals 11 marlas which

was sold in favour of the plaintiffs, ₹70,000/- by the Judgment Debtor whereas for sale of 116 kanals 13 marlas, only ₹35,000/- was received. In other words, when land less than 1/4th was sold, the price was ₹70,000/- but when land was more than 4 times, the price fetched is ₹35,000/-.

Still further, total recovery as per decree and auction notice was ₹22,753/- but entire property of 116 kanals and 13 marlas was sold. Thus, by getting the property purchased through Court auction, defendants not only defrauded the Court but also cheated the plaintiffs. No doubt, the Bank was able to recover the amount, however, the plaintiffs have been put in a very precarious position.

Let us now examine as to whether plaintiffs are representatives of the Judgment Debtor or not.

Section 47 of the Code of Civil Procedure, lays down that all questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court, executing the decree and not by a separate suit. The subsequent purchasers after the decree passed are representative of the Judgment Debtor. Plaintiffs have stepped into the shoes of Judgment Debtors. Counsel for the plaintiffs-respondents is not correct in contending that the plaintiffs are not representatives of the Judgment Debtor.

However, once the Court has found that the Court auction of the property in execution of the decree, is result of fraud, not only with the Court but also with the plaintiffs, therefore, the suit is maintainable.

Fraud vitiates everything and the Court after coming into knowledge of the fraud would not permit the fraudulent action to operate and defeat the rights of the plaintiffs who are bona fide purchasers. Any benefit obtained under a fraudulent action cannot be allowed to be retained by the persons who have committed fraud.

In view of the aforesaid, while upholding the judgments and decrees passed by the Courts below although for different reasons, the Regular Second Appeal filed by the defendants-appellants, is dismissed. Courts have rightly held that the auction sale would not effect the rights of the plaintiffs.

Questions of law framed earlier are answered against the defendants-appellants.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

29.01.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No